

February 25, 2015

Sarah Carrillo
County Counsel
County of Tuolumne
2 South Green Street
Sonora, CA 95370

Re: Your Request for Advice
Our File No. A-15-005

Dear Ms. Carrillo:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ We are only providing advice under the conflict provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Moreover, this letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Do the Act’s conflict of interest provisions prohibit Karl Rodefor, a member of the Tuolumne County Board of Supervisors, from participating in a decision concerning a development project located approximately 1000-1500 feet from his spouse’s business?

2. Do the Act’s conflict of interest provisions prohibit Supervisor Rodefor from participating in a decision concerning amendments to the County’s lease agreement with Mountain People Organics?

CONCLUSIONS

1. No. Supervisor Rodefor does not have a disqualifying conflict of interest under the Act prohibiting him from participating in a decision concerning a development project located approximately 1000-1500 feet from his spouse’s business, as explained below.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. No. Supervisor Rodefor does not have a disqualifying conflict of interest under the Act prohibiting him from participating in a decision concerning amendments to the County's lease agreement with MPO, as explained below.

FACTS

Your office represents the County of Tuolumne. Supervisor Rodefor's spouse has a cottage food business and conducts direct sales at various locations within the County. In particular, she has a lease agreement for a booth within The Farmory, a market located in a County-owned building. The Farmory is operated by Mountain People Organics, which has a lease with the County.

As background, in December 2013, the Board of Supervisors approved a 3-year lease agreement with Mountain People Organics (the "MPO Lease") for the building that contains the Farmory. The County is now considering adjusting the terms of the MPO Lease to allow the installation of a demonstration garden and outdoor seating. Whether Mountain People Organics would engage the vendors in garden activities is unknown. Any amendment to the MPO Lease would be considered and approved by the Board of Supervisors.

Mountain People Organics operates a year-round farmers market and buying club, locally known as the Farmory. Vendors lease booths from them and sell products such as produce, meat, honey, baked goods, soap, coffee, tea, herbals, candies and gifts. Supervisor Rodefor's spouse leases a booth from MPO to conduct direct sales of her cottage food products, including toffee and marshmallows. The lease payments for the booth, which measures 10' x 10', are \$150 per calendar month, and \$1,800 per year. Supervisor Rodefor estimates that total annual gross revenue from his spouse's Farmory sales is approximately \$5,000. The market is open only on Wednesdays and Fridays from 12 – 6.

The County has received a development application for a Dollar General, which is a national discount chain store selling a variety of products, including food, snacks, candy, coffee, tea, apparel, beauty, household and office décor and supplies. Dollar General would like to put its business on a parcel of land located approximately 1000-1500 feet from the location of the Farmory. The Tuolumne County Planning Commission is the decision-making body for this proposed project but its decision on the application can be appealed to the Board of Supervisors.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted a standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700(b).) However, the general rule is that a

conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

Your letter acknowledges that Supervisor Rodefor is a public official who, by virtue of his position on the Tuolumne County Board of Supervisors, will participate in decisions concerning amendments to the County's real property lease with Mountain People Organics and a proposed Dollar General store within 1000-1500 feet of the Farmory (Steps One and Two). In addition, you have identified Supervisor Rodefor's interest in the business entity of his spouse as the potentially affected financial interest (Step Three).² Under the recently amended provisions analyzing the materiality standards for financial effects on business entities, Steps Four and Five have been consolidated under Regulation 18705.1. Step Six addresses the test for what is reasonably foreseeable.

In the case of a business entity interest, the financial effect of the governmental decision is deemed material only under certain circumstances that do not apply here. (See Regulation 18705.1(a).) However, Regulation 18705.1(b) provides:

“For a governmental decision not identified in subdivision (a), the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity. Examples of decisions that may be applicable include those that:

“(1) Authorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged;

“(2) Increase or decrease the amount of competition in the field in which the business entity is engaged;

“(3) Increase or decrease the need for the products or services that the business entity supplies;

“(4) Make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives;

² Assuming his spouse possesses at least a 10 percent interest in her business, and her investment in the business is at least \$2,000, Supervisor Rodefor would have an indirect interest in the business under Section 87103(a). He would not, however, have an interest in her leasehold as it has a value below the \$2,000 threshold. (See Section 87103(b); Regulation 18729(b).)

“(5) Decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project; or

“(6) Increase or decrease the tax burden, debt, or financial or legal liability of the business entity.”

Regulation 18705.1(b) thus applies a “prudent person” standard looking to all of the surrounding factors to determine whether it is reasonably foreseeable that the financial effect of a governmental decision is material. For the effect of a decision to be “reasonably foreseeable,” it need not be likely but only needs to be “recognized as a realistic possibility and more than hypothetical or theoretical . . .” (Regulation 18706(b).)

As mentioned, Supervisor Rodefor’s spouse operates a business that is open two days during the week (6 hours each day) and grosses annually about \$5,000. Based on the facts provided, we are simply unable to conclude, without speculating, that the presence of a Dollar General and/or a demonstration garden/outdoor seating will have any real or quantifiable impact on her small “cottage food” business. In other words, without more, we are unable to conclude that there is a realistic possibility the proposed changes will have the type of impact that, for example, could double her sales or require that she lease a larger booth to accommodate the new business, thus increasing the value of her business.³ Without such facts, we are unable to conclude that Supervisor Rodefor has a conflict of interest in the decisions at issue.

Accordingly, Supervisor Rodefor may participate in both the decision concerning Dollar General, if appealed, and the decision concerning the proposed amendments to the lease between the County and Mountain People Organics.⁴

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Assistant General Counsel

By: Jack Woodside
Counsel, Legal Division

JW:jgl

³ For the same reasons, we are unable to conclude that there is a realistic possibility the presence of a Dollar General will decrease the value of her business.

⁴ Given our conclusion, we do not address the final two steps in the analysis concerning the Public Generally and Legally Required Participation exceptions.